

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 2301 OF 2002

Nalin Vallabhadas Khira .. Petitioner  
versus

Asstt.Registrar Co-op Societies,  
Government of Maharashtra & ors. .. Respondents

...

Mr.D.H. Mehta i/b N.M. Shah for the petitioner.

Mr.S.A. Pawar for the respondent nos.2 and 3.

Mr.A. Sayyed for the respondent no.1.

CORAM : D.G. KARNIK, J.

DATED : 2nd August 2005.

P.C.:

1. By this petition, petitioner challenges the action taken by respondent nos.2 and 3 in attaching the petitioner's property consisting of two industrial galas, first situate at 108, Kohinoor Industrial Estate, Western Express Highway and second situate at Shankarbhai Compound, Pandit Motilal Nehru Marg, for the recovery of the alleged dues of

Mrs.Hina N. Khira, the wife of the petitioner.

2. It appears that Mrs.Hina N. Khira who is the wife of the petitioner was carrying on business in the name and style of M/s.Anisha Packaging. Mrs.Hina had borrowed certain sum of money from the respondent no.2 Bank for her business M/s.Anisha Packaging. She did not repay the loan and a recovery certificate against her was issued under section 101 of the Maharashtra Co-operative Societies Act (for short 'the Act'), for recovery of Rs.38,73,716.44. The two properties mentioned above belonging to the petitioner were attached and a panchnama of attachment was recorded on 22nd December 1999.

3. According to the petitioner, he had neither borrowed any money from the respondent no.2 nor had guaranteed repayment of the money borrowed by his wife. The recovery certificate has not been issued against the petitioner. The properties of the petitioner are separate from the properties of his wife and the properties of the petitioner cannot be attached for the alleged dues of his wife. As a prima facie proof to show that one of the properties attached is his separate property. The petitioner

has attached a copy of the agreement under which he has purchased it.

4. The petitioner has made a written application to the respondent no.3 at whose instance the property was attached for raising the attachment. A copy of that application dated 19th August 2002 is annexed to the petition as Exhibit-E. According to the petitioner, the application has not been considered though it is required to be considered and decided under sub-rule (19) of Rule 107 of the Maharashtra Co-operative Societies Rules 1961 (for short 'the Rules').

5. Learned counsel for the respondent nos.2 and 3 submits that the respondent no.3 has received the application (Exhibit-E) dated 19th August 2002 made by the petitioner objecting to the attachment. He further submits that in view of the fact that the petition was pending in this court, the said application has not been considered on merits and has not been decided. He however submits that if so directed by this Court, the respondent no.3 would consider the said application and decide it on its own merits. Learned counsel for the petitioner

states that the petitioner would not press for the petition if the respondent no.3 is directed to consider and decide the petitioner's application (Exhibit-E). In view of this submission, it is not necessary to decide the rival contention in the petition. Suffice it to say that even under sub rule 19 of rule 107 of the Rules, the respondents are required to consider and decide the objection raised to the attachment. In view of this, following order is passed :

6. The interim order passed by this Court on 2nd September 2002 while admitting the petition, is hereby confirmed. The respondents shall consider the objection raised by the petitioner for attachment of the property and decide the application of the petitioner dated 19th August 2002, a copy of which is annexed at Exhibit-E to the petition, if they wish to attach the property afresh.

7. Rule made absolute in the aforesaid terms.

D.G. KARNIK, J